



WEB COPY

W.P.(MD) No.22460 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2021

CORAM :

**THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE**

AND

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.(MD) No.22460 of 2021

and

WMP(MD)No.18993 of 2021

Mariya Hans

.. Petitioner

Vs.

1. The Secretary,
Municipal Administration and
Water Supplies Department,
St.George Fort,
Chennai-600 009.
2. The Commissioner,
Delimitation Commission,
O/o. the Delimitation Commission,
Chennai.
3. The State Election Commissioner,
O/o. the State Election Commission,
CMBT, Chennai.
4. The Corporation Delimitation Authority cum
District Collector,
Thoothukudi Municipal Corporation,
Thoothukudi District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus, directing the respondents to conduct the election to the Thoothukudi Municipal Corporation as per 2011 Census by keeping the 13 fisherman original wards as existed in 2011 Thoothukudi Municipal Corporation Elections.

For Petitioner : Ms.A.Rajini

For R1 & R4 : Mr.P.Thilakkumar, Government Pleader

For R3 : Mr.B.Saravanan
Standing Counsel



ORDER

[Order of the Court was made by The Hon'ble ACTING CHIEF JUSTICE]

The writ petition has been filed seeking a direction to the respondents to conduct the election of the Thoothukudi Municipal Corporation as per 2011 Census by keeping the 13 fishermen original wards as existed then, instead of reducing it to 8 wards.

2. The learned counsel for the petitioner submits that taking into consideration the spirit of Article 243C of the Constitution of India, the respondents are under obligation to maintain the wards in reference to the population. The representations of poor fishermen have been taken away by reducing the wards from 13 to 8 and accordingly, the writ petition has been filed seeking appropriate direction and that too, to maintain the wards in reference to the Census of 2011.

3. The learned counsel for the petitioner has made a reference of the judgment of the Hon'ble Apex Court in the case of **Dravida Munnetra Kazhagam (DMK) vs. Secretary Governors Secretariat** reported in **[2020] 6 SCC 548**, to say that the writ petition for the prayer made is maintainable and it is not hit by Article 243-O of the Constitution of India. The Apex Court has not accepted the objection regarding the maintainability of the writ petition with reference to Article 243-O of the Constitution of India. The issue propounded therein applies to the facts of this case and accordingly, the writ petition for the prayer made by the petitioner is maintainable and it is not otherwise hit by Article 243-O of the Constitution of India. Enumerating the arguments, reference to certain paragraphs of the affidavit has been given to indicate that the Municipal Corporation was having 60 wards pursuant to the Census of 2011 and it was for the fishing community. As per the New Tamil Nadu Local Bodies Delimitation Regulations, 2017, delimitation was to be undertaken keeping in mind the mandate of Article 243C of the Constitution of India. It is on account of the intervention of some politicians that the representation of the fishermen has been reduced by amalgamating 13 wards into 8, ignoring the population of the fishermen in each ward. The details of the population, as also the reference of Rule 6(d) of the Delimitation Rules, 1970, have also been given to strengthen the argument. The prayer is accordingly to direct the respondents to maintain 13 fishermen original wards as existed in 2011 for the Municipal Corporation concerned and accordingly election to be held.

4. We have considered the submissions made by the learned counsel for the petitioner and perused the records.

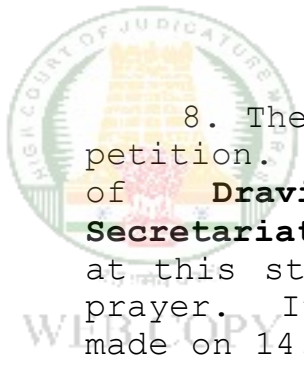


5. Before addressing the arguments of the learned counsel for the petitioner, we would like to quote the prayer made in the writ petition, which was quoted hereinabove for ready reference:-

'To issue a Writ of Mandamus, directing the respondents to conduct the election to the Thoothukudi Municipal Corporation as per 2011 Census by keeping the 13 fishermen original wards as existed in 2011 Thoothukudi Municipal Corporation Elections.'

6. The prayer is to maintain 13 fishermen original wards as per the Census of 2011. There is nothing on record to show that the original 13 fishermen wards have been reduced to 8, as alleged. No document in this behalf has been supplied to the Court, though a reference of the objection made by the petitioner on 25.11.2021 has been given. It is pursuant to the Gazette Notification issued in the year 2017, inviting objections, followed by publication on 14.12.2018. The respondents had invited objections before publication dated 14.12.2018. There is nothing on record to show any objection having been raised to the notification issued earlier in 2017 inviting objections. The document enclosed along with the writ petition showing the objection dated 25.11.2021 must be subsequent to the period of submission of the objection. A publication thereupon was made on 14.12.2018. The aforesaid publication has not even been produced by the learned counsel for the respondents.

7. It may be that the publication aforesaid has not been enclosed to avoid explanation for the delay in filing of the writ petition. In the absence of challenge to the publication, the prayer made in the writ petition cannot be granted. It is more so, as the publication is old by more than 3 years. The aforesaid is one part of the arguments. Otherwise, the factual issue in regard to the population issue and delimitation cannot be gone into while exercising the jurisdiction under Article 226 of the Constitution of India, even if for the time being ignoring Article 243-O of the Constitution of India, though it has a role in maintainability of the writ petition under Article 226 of the Constitution of India. The reference to the judgment of the Apex Court in the case of **Dravida Munnetra Kazhagam (DMK) vs. Secretary Governors Secretariat** reported in [2020] 6 SCC 548 (supra) has been given, but perusal of the said judgment shows that the facts therein are different than what exist in the representation of the writ petitioner. There the allegation against the ruling party was of postponing the election unconstitutionally and altering the constituency for that purpose. It was also refusing to effect rotation, to take undue political advantage. Serious allegations were made against the political party then in power in reference to Article 243D and 243T of the Constitution of India. Under those extraordinary circumstances, the writ petition was held maintainable.



8. The facts of the similar nature do not exist in the present petition. Thus, the judgment of the Hon'ble Apex Court in the case of **Dravida Munnetra Kazhagam (DMK) vs. Secretary Governors Secretariat** reported in **[2020] 6 SCC 548**, may not even apply, but at this stage, on facts, a case is not made out for grant of the prayer. It cannot be granted without challenge to the publication made on 14.12.2018.

9. For all the reasons given above, writ petition fails and accordingly dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Secretary,
Municipal Administration and Water Supplies Department,
St.George Fort, Chennai-600 009.
2. The Commissioner,
Delimitation Commission,
O/o. the Delimitation Commission, Chennai.
3. The State Election Commissioner,
O/o. the State Election Commission,
CMBT, Chennai.
4. The Corporation Delimitation Authority cum
District Collector, Thoothukudi Municipal Corporation,
Thoothukudi District.

+1 CC to M/s.SPL GP (SR-39962[F] dated 22/12/2021)

+1 CC to M/s.B.SARAVANAN, Advocate (SR-40027[F] dated 22/12/2021)

W.P. (MD) No.22460 of 2021

20.12.2021